IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-963

MICHAEL LONDE,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI
**To the United States Court of Appeals
for the Eighth Circuit**

JOHN J. STEWART
8000 Bonhomme
Clayton, Missouri 63105
1-314-721-4141
Attorney for Petitioner

BRENT JOHN WILLIAMS

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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Authorities

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The petitioner, MICHAEL LONDE, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in this proceeding on October 25, 1978.

OPINIONS BELOW

There was no published opinion of the District Court. The District Court did file an unpublished memorandum on May 9, 1978 finding defendant guilty. This memorandum is reproduced in Appendix B to this petition.

The opinion of the Court of Appeals has not yet been reproduced in Appendix A to this Petition.

JURISDICTION

The judgment and opinion of the United States Court of Appeals was entered on October 25, 1978. A timely petition for rehearing was denied on November 16, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

Whether the requirement set forth by this Court in *Holland v. United States* (1954), 348 U.S. 121, that the Internal Revenue investigator follow relevant leads, furnished by the taxpayer, is restricted to cases involving only a net worth presentation, or whether such a requirement is a general principal applicable to criminal investigations of alleged violations of the Internal Revenue laws.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

This case involves Section 7203, Internal Revenue Code; 26 U.S.C., Section 7203 and Section 7206 (1); Internal Revenue Code; 26 U.S.C., Section 7206(1). These are reprinted in pertinent part in Appendix C.

CONCISE STATEMENT OF THE CASE

The petitioner, MICHAEL LONDE, was charged in an indictment, issued in the District Court, Eastern District of Missouri, with wilfully and knowingly failing to make an individual income tax return for the year 1970; and for filing a prejurious income tax return for the year 1971. After a jury waived trial was held, the District Court found the defendant guilty, on both counts of the indictment, on May 8, 1978. On May 26, 1978, he was sentenced to a total of four years and fined $15,000.00, on both counts.

In its unpublished memorandum of May 8, finding defendant guilty, the district court stated, inter alia (Appendix B, infra pp. A-12-A-13):

> "Defendant has raised several defenses, none of which this Court finds to have merit. Defendant claims that the Internal Revenue Service failed to follow reasonable 'leads' furnished to it by defendant. Specifically, defendant contends that the Service failed to secure Russell Decker's financial records. The Court finds that, given all the evidence refuting defendant's alleged connection with Decker, defendant's lead was not reasonable and did not warrant follow-up beyond the production of Decker as a witness. . . ."

The Court of Appeals for the Eighth Circuit affirmed (Appendix A, infra p. A-5) the decision of the District Court.

With respect to "reasonable leads" it held (Appendix A, infra pp. A-4-A-5) that the reasonable leads doctrine was of doubtful application to this particular case, considering the source of defendant's alleged unreported income. The Court further held (Appendix A, infra pp. A-4-A-5):

> "But assuming application of the leads doctrine to a case of this kind, it still can be applied only where there is a reasonable lead, and where as here, the district court has found the lead completely lacking in credibility, a finding amply supported by the evidence; we can find no error in the conclusion of the district court that further follow-up was unwarranted."

The Court of Appeals decision was entered on October 25, 1978. Timely petition for rehearing was denied on November 16, 1978. The mandate was stayed on December 4, 1978 pending application of petition to this Court.

REASONS FOR GRANTING THE WRIT

In 1954, this Court in *Holland v. United States,* 348 U.S. 121, approved, generally, of the use of the net worth method in the presentation of a criminal prosecution for income tax evasion. During the course of its opinion, the Court laid down certain requirements with respect to information furnished by the taxpayer (S.Ct., p. 135). The Court stated that the cogency of the proof depends upon effective negation of reasonable explanations by the taxpayer inconsistent with guilt. The Court indicated that the refutation might fail when the government does not track down relevant leads furnished by the taxpayer—leads reasonably susceptible of being checked, which, if true could establish the taxpayer's innocence.

The Courts of Appeal have followed the "reasonable leads" doctrine as enunciated in the Holland case, insofar as it pertains to net worth presentation of tax evasion. The principal was somewhat extended in *United States v. Ransdell,* 450 F. 2d 130 (10th Circuit, 1971), to the bank deposit method of presentation.

The question of general importance is whether the "reasonable leads" doctrine enunciated by this Court in the Holland case is to be restricted to net worth and similar types of cases only, or whether this Court was stating a general principal applicable to criminal investigations of alleged income tax fraud when it made its declaration of policy in the Holland case.

A determination of this question poses the fundamental concept of the relationship between the Government and the citizen. During the course of an investigation for alleged tax evasion the Government is prepared to devote enormous resources of time and money. The resources between the parties, if they are viewed as contestants, is completely disparate. Given this

fundamental imbalance, the Internal Revenue Service should bear the duty to do justice, and in so doing should and must, generally, follow "reasonable leads" supplied by the taxpayer. This Court recognized the Leviathin tendency of the Service in Holland. In that case, it stated the principle in the context of a net worth case.

We submit that the matter involved is of great importance in the administration of the tax laws and in the investigation of alleged tax evasion. Posed in another fashion, can the courts declare that the investigator must follow reasonable leads in net worth cases, but need not follow them in other types of cases.

In the context of this case, it is also suggested that both the District Court and the Court of Appeals misconstrued petitioner's argument. In a transcribed interview, placed in evidence at the trial, petitioner stated to the investigator that he had received funds from various parties and then forwarded these monies, via cashier's checks drawn on approximately six St. Louis County banks, to another party. Petitioner's argument was that the investigator should have reviewed the cashier's checks at these banks to determine the validity of petitioner's contention. The bank records of cashier's checks were the reasonable leads. However, both Courts construed petitioner's argument to refer to the financial records of the third party, and to the failure of the investigator to review or subpoena the financial records of the third party.

CONCLUSION

For the reasons stated above, the decision of the Court of Appeals in the instant case raises a question of general importance in the administration of the tax laws which should be reviewed by this Court, notwithstanding the absence of a conflict of decisions.

Respectfully submitted,

JOHN J. STEWART
8000 Bonhomme Avenue
Clayton, Missouri 63105
314-721-4141
Attorney for Petitioner

APPENDIX

APPENDIX A

Decision of the Court of Appeals for the Eighth Circuit (No. 78-1416).

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1416

United States of America, Appellee, v. Michael Londe, Appellant.	Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: October 16, 1978

Filed: October 25, 1978

Before BRIGHT, STEPHENSON and HENLEY, Circuit Judges.

PER CURIAM.

Appellant, Michael Londe, was indicted by a grand jury for violating two sections of the Internal Revenue Code. Count I charged him with failing to file an income tax return for calendar year 1970 in violation of 26 U.S.C. § 7203. Count II charged Londe's tax return for 1971 was perjurious in violation of 26 U.S.C. § 7206(1). After pleading not guilty to both counts, Londe waived trial by jury and the case was heard be-

fore The Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri.

In the course of a lengthy trial, the government offered in evidence testimony on stipulations from approximately one hundred witnesses along with several hundred exhibits. Defendant Londe, on the other hand, introduced little evidence in support of his defense other than a few exhibits.

Although not requested to do so, the trial judge prepared and filed a full memorandum which includes findings of fact and conclusions of law as well as general findings of guilt. *See* Fed. R. Crim. P. 23.

Londe was convicted of both counts and received a $15,000.00 fine and four years imprisonment. The district court determined that Londe had engaged in an elaborate "Ponzi scheme" or confidence game, *see Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). This finding was based in part on uncontroverted evidence which showed that from 1969 to 1972 Londe had represented to numerous individuals that he was able to purchase ambulance "shells" direct from a factory, equip them himself and resell them at a substantial profit. He promised to share this profit with investors who would loan him money to purchase the "shells" in exchange for his promissory notes. The notes were to bring a large rate of return over a short period of time.

The government's theory at trial was that this ambulance business was nonexistent. None of the companies that supposedly had supplied the "shells" or purchased Londe's finished product had any record of dealing with him. He stipulated that he had forged the signatures of various officers of one reputable ambulance company in an effort to establish his affiliation with it.

Several of the many disgruntled investors testified to conversations they had with Londe. This testimony showed that he had given them conflicting statements as to why he was unable to obtain ordinary financing for his venture and why he failed to repay his debts to them promptly. Six such witnesses stated that Londe told them there would be no need to report any profits from their investments to the I.R.S. since all the transactions were in cash and he was not going to report his earnings.

The district court found these "investments" were not true loans since the funds were obtained by fraud and the evidence indicated that Londe recognized no obligation to repay them but instead used the borrowed money for his own purposes, repaying only those loans necessary to preserve his scheme with money borrowed from other investors. Witnesses testified that he had issued them checks which were returned by his bank without clearing. Many investors realized little or no return of capital.

The government's documentary evidence showed that Londe's gross income in 1970 was $114,000.00. This figure increased to more than $250,000.00 in 1972. These dollar amounts largely represent the difference between the money received from Londe's investors and the money he returned to them in partial repayments. In 1970 the personal expenditures from his seven checking accounts totalled $47,994.00. In 1971 the total was $40,432.00. Yet he declared no income in 1970 and only $28,000.00 of income in 1971.

Londe attempted to explain his large personal expenditures on furs, jewelry, automobiles and new homes by asserting that family and friends had given him sizeable sums of money. The government introduced testimony refuting these contentions. An alleged $17,000.00 loan from Londe's father would have come at a time when his father had assets of only $4,000.00.

An uncle and cousin denied having given Londe an $11,000.00 gift. And the attorney of a deceased friend could find no record of an alleged $15,000.00 gift.

The large discrepancy between the amount of gross income traced to Londe by the I.R.S. and the smaller amount of his recorded personal expenditures presented an additional problem for Londe. He claimed to have paid this money or much of it to Robert Decker, an employee of the International Harvester Company, who supposedly ran some major aspects of the ambulance venture. Decker allegedly failed to return the money given to him by Londe. Both in the district court and on appeal, Londe has alleged that the I.R.S. investigating agents failed to follow a "reasonable lead" he had given them because they did not look into or subpoena Decker's financial records and thus that judgment should be entered for defendant.

The district court found that "given all the evidence refuting defendant's alleged connection with Decker, defendant's lead was not reasonable and did not warrant followup beyond the production of Decker as a government witness," which did occur. Londe admitted never having met Decker, had no record of correspondence with him, and could produce no receipts for his alleged payments to Decker. Decker denied involvement with defendant directly or indirectly. Consequently, Londe's assertion that Decker was the person responsible for the ambulance swindle was deeded incredible.

The "reasonable lead" doctrine enunciated in *Holland v. United States*, 348 U.S. 121 (1954), was applied first in a "net worth" case. It requires the government to track down relevant leads furnished by a taxpayer—leads reasonably susceptible of being checked, which if true could establish the taxpayer's innocence. The doctrine has been extended somewhat to other areas, *see, e.g., United States v. Ramsdell*, 450 F.2d 130 (10th Cir. 1971), but is of doubtful application in

the case at bar where the defendant's alleged unreported income is shown to have come from his victims. But assuming application of the lead doctrine to a case of this kind, it still can be applied only where there is a reasonable lead, and where, as here, the district court has found the lead completely lacking in credibility, a finding amply supported by the evidence, we can find no error in the conclusion of the district court that further follow-up was unwarranted.

On appeal Londe alleges several other trial errors, all of which go to the sufficiency of the evidence supporting Judge Nangle's findings of fact and the resulting conviction. In reviewing a conviction in a criminal case, we must consider the evidence in a light most favorable to the government and cannot set aside factual findings made by the trial judge unless they are determined to be clearly erroneous, at least where such findings concern matters other than the ultimate question of guilt. *United States v. Marley*, 549 F.2d 561, 563 (8th Cir. 1977); *United States v. Rischard*, 471 F.2d 105, 107 (8th Cir. 1977); *Kilcrease v. United States*, 457 F.2d 1328, 1331 (8th Cir. 1972).

After giving careful consideration to the issues raised by appellant, we have determined that the record fully supports the general and special findings of the trial court and the judgment of conviction on both counts of the indictment. We must, therefore, reject Londe's arguments.

Affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHT CIRCUIT

APPENDIX B

Memorandum of the United States District Court, Eastern District of Missouri (No. 77-80 CR(3)).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

United States of America, Plaintiff, v. Michael Londe, Defendant.	No. 77-80 CR (3)

MEMORANDUM

(Filed in U.S. District Court May 9th, 1978)

Defendant Michael Londe is charged in a two-count indictment with failing to file an income tax return during the calendar year 1970, and with filing a perjurious tax return during 1971. 26 U.S.C. §§ 7203, 7206(1).

Having waived a jury, the parties tried this cause to the Court. Although no request was made pursuant to Rule 23, Federal Rules of Criminal Procedure, the Court hereby makes the following findings of fact and conclusions of law:

The evidence established that from the end of 1969 until an arrest in 1972, defendant engaged in an elaborate "Ponzi scheme" or confidence game. For a description of a "Ponzi scheme", see *Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). Defendant represented to friends, acquaintances, and various

relatives that, because of his expertise and connections in the first aid field, he was able to purchase ambulance "shells" direct from the factory, equip them himself, and sell the finished ambulance to municipalities or companies at a substantial profit. He promised to share this profit with others if they would loan him money to purchase the original vehicle. Defendant promised to repay his investors, usually within one month, their original investment and anywhere from 10% to 50% interest. During approximately a two year period, defendant had collected funds totalling $1,900,000.00 from at least sixty-two individuals. Although the funds given to defendant by the investors were often termed "loans" and were sometimes supported by promissory notes, the Court finds that they were not true loans since the funds were obtained by fraud and defendant recognized no obligation to repay. The ambulance business was non-existent, and the evidence indicates that the defendant used the "loans" for his own purposes.

In his statement made to Internal Revenue Service agents, defendant maintained that he did not initiate the ambulance "business enterprise" but merely served as a conduit to a company which supplied emergency vehicles. Defendant stated that a Russell Decker, who was employed by International Harvester Co., planned and directed all aspects of this business. Defendant claimed to do no more than solicit funds, send them to Decker and disburse profits returned. Defendant claimed that Decker refused to return investments and defendant and the other investors lost money.

The evidence adduced totally belies this statement. The records of the companies which defendant contended were supplying him with vehicles established that these companies never dealt with defendant. None of the individuals at International Harvester, with whom defendant claimed to have a connection, ever heard of defendant. Moreover, none of these individuals were even employed in the division of International Harvester

which dealt with the type of vehicle involved. Despite the extensive business dealings which defendant professed to have had with Decker, defendant had no record of any correspondence with Decker. Defendant claimed to have spoken at one point in time with Decker's secretary; Decker never had a secretary. Defendant claimed to have called Decker on Decker's unlisted telephone number, but Decker had no such number. Defendant claimed that at Decker's request, all money sent to Decker by defendant was to be in the form of cashier checks made out to defendant and endorsed over to Decker. Defendant, however, had no copies of the checks or the stubs from the purchase of such checks. There are no deposit records of the checks supposedly sent by Decker to defendant, allegedly because defendant cashed all such checks. Defendant never noticed whose signature was on the checks or on what bank they were drawn.

Numerous investors, who became suspicious of defendant's story, attempted to verify his statements as to the suppliers of the vehicles and the purchasers of finished ambulances. In all instances, the investors were told by the companies and alleged customers that they had never heard of Michael Londe. In one instance, defendant produced documents for several investors which purported to show his affiliation with Superior Coach Sales Co., a reputable emergency vehicle manufacturer. Defendant stipulated at trial, however, that he had written the signatures, which were supposed to be of the various officers of that company, on the documents himself. He also used the deceptive name of Superior Coach Sales & Service, Inc.

Throughout the two-year period, defendant gave different investors contradictory accounts concerning the specifics of his enterprise, including the identity of his customers, from whom he was buying the vehicles, why he did not borrow from conventional financing sources and why he was unable to repay investors on schedule. As to the latter, he gave at least twenty-

two different reasons, ranging from the need to care for his mentally ill and suicidal brother to the fact that the son of the person who was to deliver his money had been in a motorcycle accident and needed to have his arm amputated.

In addition, numerous misrepresentations made to investors establish the fraudulent nature of defendant's scheme. Defendant stated to Internal Revenue Service investigators that he never received automobiles at special discounts. Yet, six investors testified that they initially invested with defendant because of his promise that, in addition to the return of their principal, they would receive new automobiles free or at no charge. These investors testified that defendant said he was able to obtain these good deals because of his many purchases of ambulances from automobile manufacturers. The representatives of two automobile manufacturers involved testified that these types of special discounts and commissions were never given by the companies and were against company policies.

Defendant stated that he never gave advice to investors as to the tax treatment to be afforded to the profits they would allegedly receive. Yet, six investors testified that defendant told them there was no need to report their profits. Defendant said that he was not going to report his income and that he saw no reason for these investors to do so. He also told them that the transaction was in cash so that there was no need to report it. He said that as there were no records of the profits, there was no need to report the income.

During the period of this scheme, defendant's financial status and spending habits took a remarkable turn for the better. While defendant had stated that he received no income in his position as head of the Medical Reserve Rescue Service, a position he held until 1972, he represented his income in this position as $8,000.00 and $25,000.00 on three separate occasions between 1969 and 1971. Despite the fact that he

declared no income in 1970 and $28,036.00 in 1971, defendant admitted to the purchases of $1,000.00 in jewelry, $6,000.00 in furs, $2,000.00 in furniture, two homes on which he paid $33,900.00 in cash, and several new automobiles. In 1970, the personal expenditures from the seven checking accounts held by defendant and his wife totaled $47,994.00; in 1971, the amount was $40,432.00.

Defendant attempted to explain his increased financial status in 1970 and 1971 by claiming that family and friends had given him several large gifts of money. The evidence, however, refutes such claims. While defendant asserted that his father gave him between $15,000.00 and $17,000.00, the evidence established that at the time, his father had assets of only $4,125.00. Defendant asserted that his cousin and uncle had given him $11,000.00 as a gift; both individuals denied the same at trial. Defendant also claimed that a friend, who has since died, gave him $15,000.00. Her attorney, however, who handled all of her financial dealings while she was alive, denied that such a gift had been made. Defendant also claimed that this same individual in effect gave him $22,000.00 by guaranteeing a bank loan, on which he later defaulted. Purportedly, this sum was to be used in a joint business venture between the two. The evidence showed that this business never existed and that defendant had in fact considered starting the same business with another friend but had abandoned the idea.

The evidence also established that defendant had no intention of repaying the loans. He only repaid those loans necessary to preserve his scheme. He insured that the complainers, and the investors who were recruiting other investors, were paid back, some with a profit. With the exception of these investors, defendant's behavior belied any intent to repay. He gave notes signed in blank to one investor to distribute to investors as they paid in. He gave an endless series of reasons for not repaying as promised. He continued to recruit new investors after he explained to other investors that someone at International Harvester had stolen all of the funds invested. He signed false joint venture agreements with some investors. In June, 1971, during the middle of this scheme, he stated on a City Bank financial statement, in response to a specific question, that he had no unsecured notes payable. Thus, the Court finds that defendant had no intention of repaying his investors as promised.

The evidence established that defendant did not file a tax return in 1970. Indeed, defendant admitted the same on his 1971 tax return. Defendant asserted that the failure to file was the fault of defendant's Certified Public Accountant, Bernard Eder. Defendant claimed that he had signed blank 1970 tax returns and understood that Eder would complete the returns and mail them. Eder, however, testified that he never received the forms, that it was against office policy to follow the procedures claimed by defendant, and that a search of his records showed that he had not prepared such a form for defendant.

Defendant is charged in Count I of the indictment with willful failure to file an individual income tax return in 1970, in violation of 26 U.S.C. §7203. In order to convict defendant of such a charge, the government must establish, beyond a reasonable doubt: (1) that defendant was a person required by law to file a return for the taxable period; (2) that he failed to file a return at the time required; and (3) that the failure was willful. *United States v. Matosky*, 421 F.2d 411-412 (7th Cir. 1970); *United States v. Ostendorff*, 371 F.2d 729, 730 (4th Cir. 1967); *United States v. McCormick*, 67 F.2d 867, 868 (2d Cir. 1933).

The evidence established that defendant had a gross income of $114,293.00 in 1970. Defendant admitted that he had sufficient income to warrant the filing of a return and he knew that he should file. Internal Revenue Service records established that defendant failed to file a 1970 return. The Court

further finds that defendant's failure to file was willful. Defendant's attempt to shift blame to his Certified Public Accountant, his admission in 1971 that he did not file a 1970 return, and his statements to several investors that he was not reporting his profits all support this conclusion. Accordingly, the Court concludes that the government has met its burden and that defendant is guilty as charged in Count I of the indictment.

Count II of the indictment charges defendant with filing a perjurious return in 1971 in violation of 26 U.S.C. §7206(1). The government must establish beyond a reasonable doubt that defendant filed a false tax return which defendant knew to be false as to a material matter. *United States v. Brown*, 446 F. 2d 1119, 1122 (10th Cir. 1971); *Blumenfield v. United States*, 306 F.2d 892, 895 (8th Cir. 1962). Defendant reported a gross income of $28,036.00 in 1971 while the evidence showed that he received an additional $252,012.09 in gross income. Clearly, defendant's 1971 return was false as to a material matter. *Hoover v. United States*, 358 F.2d 87, 89 (5th Cir. 1966); *United States v. DiVarco*, 343 F.Supp. 101, 102 (N.D. Ill. 1972), *aff'd*, 484 F.2d 670 (7th Cir. 1973); *cf., United States v. Null*, 415 F.2d 1178, 1181 (4th Cir. 1969).

The Court further finds that defendant's failure to report his income accurately was willful. The gross disparity between what was earned and what was reported supports this finding. Additionally, statements made by defendant to various investors compel such a finding. Before filing his 1971 return, defendant told one investor, Rex Bills, that "he [defendant] kept a low profile, and he did not have much income through preceding years and he was not going to be reporting all of this as income, that he kept money in a safe deposit box".

Defendant has raised several defenses, none of which this Court finds to have merit. Defendant claims that the Internal Revenue Service failed to follow reasonable "leads" furnished

to it by defendant. Specifically, defendant contends that the Service failed to secure Russell Decker's financial records. The Court finds that, given all of the evidence refuting defendant's alleged connection with Decker, defendant's lead was not reasonable and did not warrant follow-up beyond the production of Decker as a government witness. Defendant's claim that his increased financial status in 1970 and 1971 was due to gifts of money from family and friends is totally belied by the evidence. Defendant's claim that he had given all the necessary information for the filing of his 1970 return to his Certified Public Accountant fails to find any support in the evidence.

Accordingly, the Court concludes that the government has established beyond a reasonable doubt that defendant derived economic benefit from the scheme, that he had no intention to repay the investors beyond what was necessary to preserve the scheme, and that he knowingly filed a false return in 1971. As stated previously, the Court concludes that defendant willfully failed to file his 1970 income tax return. Therefore, the Court finds defendant guilty as charged in Counts I and II of the indictment.

/s/ JOHN F. NANGLE
United States District Judge

Dated: May 9, 1978.

APPENDIX C

A). **Section 7203, Internal Revenue Code; 26 U.S.C. Section 7203.**

Any person required under this title to pay any estimated tax or tax, as required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of Section 6015 or Section 6016), keep any records, or supply any information, who wilfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $10,000.00, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

B). **Section 7206(1) Internal Revenue Code; 26 U.S.C. Section 7206(1).**

Any person who—

(1) Wilfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter;

* * *

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000.00, or imprisoned not more than 3 years, or both, together with the costs of prosecution.